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WORKERS' COMPENSATION—"CURRENT TOTAL DISABILITY" BENEFITS ARE NOT LEGITIMATE. *Arkansas Secretary of State v. Guffey*, 291 Ark. 624, 727 S.W.2d 826 (1987).

On July 27, 1981, J.T. Guffey suffered an injury compensable under the Arkansas Workers' Compensation Act¹ while employed by the office of the Arkansas Secretary of State (Secretary). Guffey received temporary total benefits² from July 28, 1981 until April 25, 1983. At that time the Workers' Compensation Commission found that his healing period³ had ended and that he had sustained a fifty-five percent permanent partial impairment to his right foot.⁴ The Secretary paid Guffey compensation for fifty-five percent permanent partial impairment to the right foot as a scheduled injury pursuant to the Workers' Compensation Act.⁵

After undergoing further surgery on his foot in September of 1984, Guffey claimed additional benefits for an alleged period of disability existing from April 26, 1983 to September 20, 1984. At an October 26, 1984 administrative hearing, Guffey originally contended

1. ARK. CODE ANN. §§ 11-9-101 to -811 (1987) (formerly codified at ARK. STAT. ANN. §§ 81-1301 to -1367 (1976 and Supp. 1985)).

2. Temporary total disability benefits refer to benefits awarded for a period of time within the healing period in which an employee suffers a total incapacity to earn wages. See ARK. CODE ANN. §§ 11-9-102(5), -519 (1987). See also *Arkansas State Highway and Transp. Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

3. "Healing Period" is defined under the Workers' Compensation Act as "that period for healing of an injury resulting from an accident." ARK. CODE ANN. § 11-9-102(6) (1987). More specifically, the Arkansas Court of Appeals has held:

The healing period continues until the employee is as far restored as the permanent character of his injury will permit. If the underlying condition causing the disability has become stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. The persistence of pain may not of itself prevent a finding that the healing period is over, provided that the underlying condition has stabilized.

Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 131-32, 628 S.W.2d 582, 586 (1982) (citing 2 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 57.12 (1981)). Generally, the termination of the healing period determines when temporary benefits cease and when the extent of permanent disability can be appraised for purposes of making a permanent partial or a permanent total award. 2 A. LARSON, *supra* 57.12(b). See also *Sunbeam Corp. v. Bates*, 271 Ark. 385, 392, 609 S.W.2d 102, 106 (Ark. App. 1980) (Newbern, J., dissenting).

4. ARK. CODE ANN. § 11-9-521(f) (1987) allows permanent partial disability benefits to a claimant who has suffered a partial loss of the use of a member when the loss of use is of a permanent nature.

5. Scheduled injuries are those specifically provided for in ARK. CODE ANN. § 11-9-521 (1987).

that he was either permanently totally disabled⁶ or "currently totally disabled"⁷ during the period in question. However, Guffey later dropped his claim of permanent total disability and the administrative law judge heard evidence only on Guffey's entitlement to current total disability benefits.⁸

The administrative law judge denied current total disability benefits for Guffey,⁹ and he appealed to the full Workers' Compensation Commission.¹⁰ The Commission affirmed the denial of current total disability benefits, holding that there is no authority for an award of such benefits under the Workers' Compensation Act.¹¹ Guffey then appealed to the Arkansas Court of Appeals.¹² The court of appeals reversed the Commission, holding that there is clear statutory authority for the award of current total disability benefits after expiration of the healing period.¹³

6. Permanent total disability exists when a claimant suffers a total incapacity to earn wages due to injury and such incapacity will not improve with time. See generally 2 A. LARSON, *supra* note 3, § 57.13. Permanent total disability is not defined by the Arkansas Workers' Compensation Act.

7. Current total disability was generally held to be an award of total disability benefits for an indefinite period of time pursuant to ARK. STAT. ANN. § 81-1313(a) (1976) (now codified at ARK. CODE ANN. § 11-9-521 (1987)). See, e.g., *City of Humphrey v. Woodward*, 4 Ark. App. 64, 628 S.W.2d 574 (1982); *Sunbeam Corp. v. Bates*, 271 Ark. 385, 609 S.W.2d 102 (Ark. App. 1980). Current total disability is not mentioned in the Arkansas Workers' Compensation Act.

8. The parties agreed that the only question before the administrative law judge was whether Guffey was entitled to receive current total disability benefits after April 25, 1983. *Arkansas Secretary of State v. Guffey*, 291 Ark. 624, 626, 727 S.W.2d 826, 827 (1987).

9. The administrative law judge held that Guffey failed to prove his entitlement to current total disability benefits. See *Guffey v. Arkansas Secretary of State*, 18 Ark. App. 54, 56, 710 S.W.2d 836, 837 (1986).

10. ARK. CODE ANN. § 11-9-704 (1987) provides for an appeal to the full Workers' Compensation Commission after receipt by the claimant of the judgment of the administrative law judge. The Commission reviews the evidence de novo.

11. WCC Claim No. D108623 (10-24-85). The Commission ruled that Guffey had not proven his entitlement to permanent total disability regardless of the fact that the parties had agreed that the only issue before the administrative law judge was Guffey's entitlement to current total disability benefits.

12. Ark. S. Ct. R. 29 provides for the appeal to the Arkansas Court of Appeals.

13. The court of appeals relied heavily upon ARK. STAT. ANN. § 81-1313(a) (1976) (now codified at ARK. CODE ANN. § 11-9-519 (1987)) and several Arkansas Court of Appeals cases decided subsequent to the Arkansas Supreme Court's decision of *McNeely v. Clem Mill and Gin Co.*, 241 Ark. 498, 409 S.W.2d 502 (1966) (affirming an award of "total disability" benefits without requiring a finding of either permanent or temporary nature of such benefits). The court of appeals also reversed the Commission's determination that Guffey was not entitled to permanent total disability. The court held that, because the parties had withdrawn the issue of permanency at the administrative hearing, *Arkansas Louisiana Gas Co. v. Grooms*, 10 Ark. App. 92, 661 S.W.2d 433 (1983) required reversal inasmuch as the Commission had based its decision on a finding of fact which was clearly not in issue or developed by the evidence. *Guffey v. Arkansas Secretary of State*, 18 Ark. App. 54, 710 S.W.2d 836 (1986).

On appeal, the Arkansas Supreme Court reversed,¹⁴ holding that the Arkansas Workers' Compensation Act does not authorize the award of "current total" or "limited total" disability benefits after the end of the healing period.¹⁵ *Arkansas Secretary of State v. Guffey*, 291 Ark. 624, 727 S.W.2d 826 (1987).

States first enacted workers' compensation legislation in the late nineteenth century and early twentieth century as a result of what one notable authority has described as a simultaneous increase in industrial accidents and a decrease in workers' common law tort remedies.¹⁶ Before such enactments, employees were without a common law remedy in at least eighty-three percent of all cases against employers.¹⁷ Eventually, society recognized that "in a modern industrial state the risk of injury to workmen . . . is a social risk, chargeable to the business itself, the losses arising from which are to be added to the productive cost and to be borne ultimately by the community."¹⁸ It is from this perspective that the law of workers' compensation developed.¹⁹

The typical workers' compensation act provides for cash-wage benefits and medical care benefits to employees who are the victims of work-related disabilities or injuries and for death benefits to the employee's dependents.²⁰ In exchange for these assured benefits, the employee and his dependents are normally not allowed to maintain a civil action against the employer for an injury covered by the workers' compensation system.²¹ The cost of the system is ultimately borne by society via adjustments in the price the employer requires for his

14. Thomas S. Streetman, Special Justice, wrote the court's opinion. Justice Purtle filed a concurring opinion in which he stated that he considered the majority's language too broad in that it may be misinterpreted as holding that "injured workers are barred from receiving successive or interrupted periods of temporary total or partial disability." 291 Ark. at 629, 727 S.W.2d at 828. Justices Hayes and Glaze did not participate in the court's ruling.

15. The court also held that the court of appeals was correct in reversing the Commission's determination of permanent total disability. *Id.* at 628-29, 727 S.W.2d at 828.

16. 2 A. LARSON, *supra* note 3, § 4.00. However, Larson does note that there appeared to be the beginnings of a trend to cut back employers' defenses. This trend was pre-empted by the Workers' Compensation Legislation. *Id.*

17. 2 A. LARSON, *supra* note 3, § 4.30.

18. Kawaler, *Intentional Torts Under Workers' Compensation Statutes: A Blessing or a Burden*, 9 WORK. COMP. L. REV. 720 (1986) (quoting, I. HONNOLD, WORKMEN'S COMPENSATION 9-10 (1918)).

19. For a more detailed discussion of the conditions and circumstances which gave rise to the development of compensation acts, see 2 A. LARSON, *supra* note 3, ch. II (1985).

20. Employer's defenses have been largely eliminated. See, e.g., ARK. CODE ANN. § 11-9-105 (1987).

21. See ARK. CODE ANN. § 11-9-105 (1987) (providing for exclusivity of remedies when the Workers' Compensation Act is applicable).

goods or services.²²

Workers' compensation legislation commonly defines four categories of compensable disability.²³ There are two variables: degree of disability (partial or total), and duration of disability (temporary or permanent).²⁴ The resulting categories are temporary total disability, permanent total disability, temporary partial disability, and permanent partial disability.²⁵ Almost all states provide scheduled benefits,²⁶ which are a type of permanent partial disability benefits, for loss of body members or, more commonly, loss of use of body members.²⁷ The issue in *Arkansas Secretary of State v. Guffey*²⁸ arose because the Arkansas Court of Appeals attempted to add a category to the four listed above. The category at issue in *Guffey*, current total disability, is not the same as temporary total disability or permanent total disability under Arkansas law. Temporary total disability may be awarded only within the healing period,²⁹ whereas current total disability may be awarded after the healing period and can continue indefinitely.³⁰ Permanent total disability is a final adjudication of the claimant's condition and entitles him to total disability benefits for the rest of his life.³¹ Current total disability, however, awards total disability benefits only for an indefinite period of time and implies that there will be a later re-evaluation as to the extent of the claimant's

22. 2 A. LARSON, *supra* note 3, §§ 1.10-1.20 (1985).

23. ARK. CODE ANN. § 11-9-102(5) (1987) defines "disability" for workers' compensation purposes. It is "incapacity because of injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the injury." ARK. CODE ANN. §§ 11-9-519 to -527 (1987) governs the awards of benefits due to disability.

24. *See generally* 2 A. LARSON, *supra* note 3, § 57.12(a).

25. *Id.* The Arkansas Workers' Compensation Act does not specifically provide for categories of disability. The definition section, ARK. CODE ANN. § 11-9-102 (1987) (formerly ARK. STAT. ANN. § 81-1302 (1976)), does not even mention the terms. However, § 11-9-102(5) does define "disability." *See supra* note 22. Consequently, case law has almost entirely defined the terms in Arkansas. In addition, ARK. CODE ANN. §§ 11-9-501 to -506 (1987) (formerly ARK. STAT. ANN. § 81-1310 (1976)) and ARK. CODE ANN. §§ 11-9-519 to -526 (1987) (formerly ARK. STAT. ANN. § 81-1313 (1976)) seem to contemplate the four-category scheme.

26. Scheduled awards are fixed statutory "schedules" or lists of benefits a claimant will receive for the loss or loss of the use of specific body parts. The schedules of most states include, for example, specified amounts for toes, eyes, hearing in one ear, hearing in both ears, etc. *See* J. NACKLEY, *PRIMER ON WORKERS COMPENSATION* 45-58 (1987).

27. For a discussion of schedule benefits, *See* 2 A. LARSON, *supra* note 3, § 58.00 (1987).

28. 291 Ark. 624, 727 S.W.2d 826 (1987).

29. *Arkansas State Highway and Transp. Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

30. *See, e.g., Electro-Air v. Villines*, 16 Ark. App. 102, 697 S.W.2d 932 (1985).

31. ARK. CODE ANN. § 11-9-519 (1987).

entitlement of benefits.³²

In 1939 Arkansas became the forty-seventh state³³ to enact workers' compensation legislation.³⁴ The Arkansas Supreme Court soon held that, because the Act is highly remedial in nature, it therefore should be liberally construed to achieve its purposes.³⁵ This policy of liberal construction has continued to the present.³⁶ In furtherance of this policy, Arkansas courts have traditionally been required to resolve all doubts as to coverage in favor of the claimant.³⁷

The genesis of current total disability has been attributed to the Arkansas Supreme Court's decision in *McNeely v. Clem Mill and Gin Co.*³⁸ In *McNeely* the claimant suffered a scheduled injury for which he received the statutory compensation.³⁹ Later the claimant brought an additional claim in which the Commission found that he was "to-

32. *Electro-Air v. Villines*, 16 Ark. App. 102, 697 S.W.2d 932 (1985).

33. At that time there were only 48 states in the Union, thus making Arkansas the next to the last state to enact such legislation. The only malingeringer as of 1939 was Mississippi.

34. The original Act, 1939 Ark. Acts 319, was later amended by Init. Meas. 1948, No. 4 § 1 at 1949 Ark. Acts 1420 (amended by 1976 Ark. Acts 1337, § 1).

35. *Stout Const. Co. v. Wells*, 214 Ark. 741, 217 S.W.2d 841 (1949); *E.H. Noel Coal Co. v. Grilc*, 215 Ark. 430, 221 S.W.2d 49 (1949); *Elm Springs Canning Co. v. Sullins*, 207 Ark. 257, 180 S.W.2d 113 (1944); *Williams Mfg. Co. v. Walker*, 206 Ark. 392, 175 S.W.2d 380 (1943); *Mack Coal Co. v. Hill*, 204 Ark. 407, 162 S.W.2d 906 (1942).

36. *City of Waldo v. Poetker*, 275 Ark. 216, 628 S.W.2d 329 (1982) (citing *Alfred v. Jackson Atlantic, Inc.*, 268 Ark. 695, 595 S.W.2d 249 (Ark. App. 1980) (Workers' Compensation Act is highly remedial and is therefore entitled to liberal construction)); *Aluminum Co. of America v. Henning*, 260 Ark. 699, 543 S.W.2d 480 (1976) (declining to adopt a narrow construction of ARK. STAT. ANN. §§ 81-1317 (now codified at ARK. CODE ANN. § 11-9-701 (1987)) and 81-1319 (1976) (now codified at ARK. CODE ANN. §§ 11-9-801 to -811 (1987)) and reaffirming that the Act must be given a liberal construction in light of its beneficent and humane purpose); *International Paper Co. v. McGoogan*, 255 Ark. 1025, 504 S.W.2d 739 (1974) (Workers' Compensation Act enacted for beneficent and humane purposes and in giving effect to these purposes it must be construed liberally).

37. *Central Maloney, Inc. v. York*, 10 Ark. App. 254, 663 S.W.2d 196 (1984); *O.K. Processing, Inc. v. Servold*, 265 Ark. 352, 578 S.W.2d 224 (1979) (the Workers' Compensation Commission must draw all legitimate inferences and resolve doubts in favor of the claimant, viewing and construing the evidence in favor of the claimant. The purpose of the Workers' Compensation Act is to compensate those who, by reasonable construction, are within the terms of the Act). The rule in *Servold*, which appears to implicate the claimant's burden of proof, has probably been overruled by the enactment of § 10, 1986 Ark. Acts 10 (now codified at ARK. CODE ANN. § 11-9-704 (1987)) which provides that, when weighing evidence, the Administrative Law Judge and Commission shall not give the benefit of the doubt to either party. This legislation does not, however, appear to overrule *Maloney* wherein all doubts as to whether a particular claim is covered by the Workers' Compensation Act must be resolved in favor of the claimant.

38. 241 Ark. 498, 409 S.W.2d 502 (1966).

39. The claimant suffered the total loss of the use of his right leg below the knee. That is a scheduled injury under ARK. STAT. ANN. § 81-1313(c)(21) (1986) (now codified at ARK. CODE ANN. § 11-9-521(e) (1987)).

tally disabled.”⁴⁰ Upon that finding the Commission ordered that the claimant receive additional benefits.⁴¹ The supreme court analyzed the case as presenting the question “whether an employee who suffers a scheduled injury which proves to be *totally and permanently* disabling is entitled only to the restricted compensation specified for the scheduled injury or to the greater benefits provided for *total and permanent disability*.”⁴² In holding that the claimant was entitled to the greater benefits provided by permanent total disability, the court relied heavily upon section 81-1313(a) of Arkansas Statutes Annotated,⁴³ which provides that, in all non-specified cases, *permanent total disability*⁴⁴ shall be determined in accordance with the facts of the particular case.⁴⁵ The court then briefly took note of the employee’s complaint that the Commission, in finding the claimant’s disability to be total, did not affirmatively designate it as permanent, but rather found that the duration of the disability was not determinable at the time of the hearing.⁴⁶ The court responded, “we fail to see how [the employer is] hurt by the commission’s deferment of this question until the exact extent of the disability might become clearer” in light of the fact that there was substantial evidence that could have sustained a finding of permanence.⁴⁷ This dicta was later relied on by the court of appeals in upholding current total disability compensation.⁴⁸

Fourteen years later in *Sunbeam Corp. v. Bates*,⁴⁹ the Arkansas Court of Appeals authorized an award of “total disability” to a claimant after the healing period ended.⁵⁰ The court held that section 81-1313(a)⁵¹ and section 81-1302(e)⁵² plainly meant “that if [a claimant]

40. 241 Ark. at 499, 409 S.W.2d at 503.

41. *Id.*

42. 241 Ark. at 498, 409 S.W.2d at 503 (emphasis added).

43. ARK. STAT. ANN. § 81-1313(a) (1960) (now codified at ARK. CODE ANN. § 11-9-519 (1987)).

44. *Id.* (emphasis added).

45. The statute had not changed by the time *Guffey* was decided. The statute reads: “Loss of both hands, or both arms, or both legs, or both eyes, or any two [2] thereof shall, in the absence of clear and convincing proof to the contrary, constitute permanent total disability. In all other cases, permanent total disability shall be determined in accordance with the facts.” ARK. STAT. ANN. § 81-1313(a) (1976) (now codified at ARK. CODE ANN. § 11-9-519(b) and (c) (1987)).

46. 241 Ark. at 501, 409 S.W.2d at 504.

47. *Id.* This was only in dicta and was not the holding of the case.

48. See *Guffey v. Arkansas Secretary of State*, 18 Ark. App. 54, 710 S.W.2d 836 (1986).

49. 271 Ark. 385, 609 S.W.2d 102 (Ark. App. 1980).

50. *Id.* At the time *Sunbeam* was decided, *McNeely* had not been regarded as authorizing non-permanent benefits after the healing period.

51. ARK. STAT. ANN. § 81-1313(a) (1976) (now codified at ARK. CODE ANN. § 11-9-519(a) (1987)) reads: “In case of total disability, there shall be paid to the injured employee

is totally incapacitated to earn in the same or any other employment the wages he was receiving at the time of his injury, then he is entitled to receive weekly benefits during the continuance of such total disability."⁵³ This award of total disability benefits after the healing period, without any determination of permanence, and with no cap on the amount which could ultimately be received by the claimant,⁵⁴ is what ultimately became termed "current total disability" benefits.⁵⁵

Judge Newbern vigorously dissented from the majority's opinion in *Sunbeam*.⁵⁶ In his opinion, the Workers' Compensation Act should be interpreted as imposing a duty upon the Commission, at some point, of making a final determination of permanent disability or lack thereof.⁵⁷ He believed that the Commission should make that determination when the healing period has ended and there is no prospect of rehabilitation within the purview of section 81-1310(f).⁵⁸

during the continuance of such total disability sixty-six and two thirds percent (66 ²/₃%) of his average weekly wage"

52. ARK. STAT. ANN. § 81-1302(e) (1976) (now codified at ARK. CODE ANN. § 11-9-102(5) (1987)) reads: "(e) 'Disability' means incapacity because of injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the injury."

53. *Sunbeam Corp. v. Bates*, 271 Ark. at 389, 609 S.W.2d at 104.

54. ARK. CODE ANN. § 11-9-501, -502 (formerly ARK. STAT. ANN. § 81-1310 (Supp. 1979)) provides caps on the payment of money compensation and specifically provides that the only categories which shall not have a cap are permanent total disability and death benefits. The majority in *Sunbeam*, however, did not address this statute.

55. See, e.g., *Pitts v. Western Electric*, 15 Ark. App. 85, 689 S.W.2d 582 (1985). Judge Newbern's dissent in *Sunbeam* dubbed the concept "limited total disability." 271 Ark. at 390, 609 S.W.2d at 105 (Newbern, J., dissenting); see also *City of Humphrey v. Woodward*, 4 Ark. App. 64, 628 S.W.2d 574 (1982); *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

56. 271 Ark. at 389, 609 S.W.2d at 105. Judge Newbern initially noted that the majority had not cited *any* precedent for its allowance of total disability benefits beyond the healing period and "during the continuance of such total disability" either from Arkansas or any other jurisdiction. *Id.* He then opined that "[t]he entire basis for . . . this new kind of 'limited' total disability is the fact that *Sunbeam* will not hire the [claimant]." *Id.* Judge Newbern argued that ARK. STAT. ANN. § 81-1310 (Supp. 1979) (now codified at ARK. CODE ANN. §§ 11-9-501 to -507 (1987)) should control the periods of compensation a claimant is entitled to receive. 271 Ark. at 390-91, 609 S.W.2d at 105. More importantly, he asserted that both ARK. STAT. ANN. § 81-1310 (1976) (now codified at ARK. CODE ANN. § 11-9-505(c) (1987)) (providing that a claimant's request for payment of rehabilitation expenses must be filed prior to a determination of the claimant's permanent disability) and decisions typified by *International Paper Co. v. McGoogan*, 255 Ark. 1025, 504 S.W.2d 739 (1974) (holding claimant was entitled to temporary total disability benefits during his healing period) contemplate that at some point a final determination of permanent disability, or lack of it, should be made. 271 Ark. at 389-94, 609 S.W.2d at 105-07.

57. 271 Ark. at 393-94, 609 S.W.2d at 106-07. See *supra* note 56.

58. 271 Ark. at 393-94, 609 S.W.2d at 107. See *supra* note 56. ARK. STAT. ANN. § 81-1310(f) (1976) is now codified at ARK. CODE ANN. § 11-9-505 (1987).

In 1982 current total disability was finally given its label. In *City of Humphrey v. Woodward*⁵⁹ the court of appeals affirmed an award of current total disability on the authority of *Sunbeam*.⁶⁰ In dicta, the court attempted to clarify the concept of current total disability as "an award [of total disability benefits] which will not cease until some undetermined time in the future."⁶¹ Later, in *Mad Butcher, Inc. v. Parker*,⁶² the court of appeals reversed an award of temporary total disability to a claimant where the healing period had ended.⁶³ However, the court then remanded the case to the Commission to determine whether the claimant would be entitled to current total disability in light of the holdings of *Sunbeam* and *City of Humphrey*.⁶⁴

The court of appeals again attempted to clarify the current total disability doctrine in *Electro-Air v. Villines*.⁶⁵ The claimant had completed her healing period and sustained a twenty percent permanent disability to one foot.⁶⁶ The employer contended that an additional award of current total disability was not in conformity with prior doctrine.⁶⁷ In upholding the award of current total disability the unanimous court stated:

[T]he fact that the total disability may not last forever is not harmful to the employer or the insurance carrier. *The cases in which current total disability is awarded are those in which the Commission is not quite ready to admit that a claimant will never be able to return to work.*⁶⁸

Finally, in 1986 the court of appeals decided *Guffey v. Arkansas*

59. 4 Ark. App. 64, 628 S.W.2d 574 (1982).

60. *Id.* at 65, 628 S.W.2d at 575.

61. *Id.* at 67, 628 S.W.2d at 575.

62. 4 Ark. App. 124, 628 S.W.2d 582 (1982).

63. *Id.* at 131, 628 S.W.2d at 585 (relying on *International Paper Co. v. McGoogan*, 255 Ark. 1025, 504 S.W.2d 739 (1974) (holding that temporary total benefits are payable from the date of injury to the end of the healing period)). See *supra* note 59. The court in *Mad Butcher* did not cite *Arkansas State Highway and Transp. Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981) (holding that temporary total disability existed only within the healing period) which would appear to control the issue more directly.

64. 4 Ark. App. at 65, 628 S.W.2d at 574. This process of reversing the award of temporary total disability benefits because the healing period had ended, followed by remanding for a determination of current total disability benefits on the authority of *Sunbeam* and *City of Humphrey*, was followed in *Moro, Inc. v. Davis*, 6 Ark. App. 92, 638 S.W.2d 694 (1982).

65. 16 Ark. App. 102, 697 S.W.2d 932 (1985).

66. *Id.* at 104, 697 S.W.2d at 933.

67. *Id.* at 106, 697 S.W.2d at 934-35.

68. *Id.* at 107, 697 S.W.2d at 935 (emphasis added). The court suggested that the Commission must have thought there to be a possibility that the claimant would "learn to manage her persistent pain and once again return to the job market as a productive worker." *Id.*

Secretary of State.⁶⁹ In reversing the Commission,⁷⁰ the court held that there was clear statutory authority for awarding total disability benefits for an indefinite period of time after the healing period has ended.⁷¹ This issue was then appealed to the Arkansas Supreme Court.

The supreme court began its analysis of the statutory legitimacy of current total disability by acknowledging that the Workers' Compensation Act is entitled to a liberal construction with all doubts resolved in favor of the claimant.⁷² However, where the Act is clear and not subject to interpretation, the court must adhere to the law as enacted and may not award benefits which are not provided for in the Act.⁷³ Since the court knew of no decisions on point from other states or authoritative writings concerning this issue,⁷⁴ the court relied only on *McNeely v. Clem Mill and Gin Co.*,⁷⁵ and the Arkansas Workers' Compensation Act to determine whether current total disability benefits could be awarded.⁷⁶

The court noted that the court of appeals and the Commission interpreted *McNeely* as allowing some temporary benefits to be paid after the end of the healing period.⁷⁷ The court then clarified *McNeely* by stating that "[t]o the extent that *McNeely* has been interpreted as holding that temporary benefits, regardless of how they are denominated, may be paid after the end of the healing period, that interpretation is erroneous."⁷⁸

The court then addressed the issue of whether the Arkansas Workers' Compensation Act authorized the payment of current total

69. 18 Ark. App. 54, 710 S.W.2d 836 (1986).

70. *Id.* at 56, 710 S.W.2d at 837.

71. *Id.* at 56, 710 S.W.2d at 837-38. See also *supra* note 13.

72. *Arkansas Secretary of State v. Guffey*, 291 Ark. 624, 627, 727 S.W.2d 826, 827 (1987). See also *supra* notes 35-36.

73. 291 Ark. at 627, 727 S.W.2d at 827. The court noted that the Act does not mention current total disability benefits, and the Arkansas Supreme Court has never specifically authorized them. *Id.*

74. Guffey's attorneys conceded during oral argument that they were unaware of legislation or cases from other jurisdictions which permit payment of current total disability benefits after the healing period ends. The court also noted that none of the text writers discuss the award of non-permanent total benefits beyond the healing period. *Id.* at 628, 727 S.W.2d at 828.

75. The court acknowledged: "[t]he concept of current total disability benefits seems to have been based on our decision in *McNeely v. Clem Mill and Gin Co.*, 241 Ark. 498, 409 S.W.2d 502 (1966) although that terminology is not expressly mentioned in that case." 291 Ark. at 628, 727 S.W.2d at 828.

76. 291 Ark. at 628, 727 S.W.2d at 828.

77. *Id.*

78. *Id.*

disability benefits after the healing period. In a brief, conclusory sentence, the court held that it was not willing to give such a construction to the Act.⁷⁹ The court then reversed the court of appeals and held that the Commission's assertion that it had no legal authority to award current total disability benefits after the expiration of the healing period was correct.⁸⁰

Guffey appears to withdraw Arkansas from an anomalous position in the field of workers' compensation law. The majority of states regard the end of the healing period as the point at which temporary benefits cease and the extent of permanent benefits can be determined.⁸¹ Since *Guffey* reveals the truism that current total disability benefits are temporary benefits, Arkansas is now solidly in conformity with the majority.

Guffey can be reconciled with *McNeely*. In applying the statutory law of Arkansas, the court in *McNeely* relied on a statute which applies to *permanent* total disability.⁸² In framing the issue presented by the case, the court referred to the benefits awarded to the claimant as "total *and* permanent disability."⁸³ So it is quite probable that the *McNeely* court simply looked upon the Commission's award as one of permanent total disability instead of an award of total disability benefits after the healing period and with *indefinite* duration. This is consonant with *Guffey* wherein the court held that *McNeely* did not authorize temporary benefits after the healing period.⁸⁴ Perhaps the most striking point to note about *McNeely*, however, is that the issue and the holding in *McNeely* is very distinct from the dicta upon which the court of appeals later relied in supporting current total

79. The court's entire analysis of the act is as follows:

Our Act does not authorize award of current total or limited total disability benefits after the end of the healing period. If those benefits are to be provided, it will be necessary for the Arkansas General Assembly to determine the circumstances under which injured workers will qualify for those benefits.

Id. at 628, 727 S.W.2d at 828.

80. *Id.* at 628, 727 S.W.2d at 828. Since the court could not ascertain any basis in either *McNeely* or the Act for the award of current total disability benefits after the healing period, there is therefore no legal authority for such an award.

81. 2 A. LARSON, *supra* note 3, § 57.12(b) and cases cited therein at footnote 7. See also Bignell v. Wise Mechanical Contractors, 651 P.2d 1163 (Ak. 1982); Hudson v. Mastercraft Div., Collins & Aikman Corp., 86 N.C. App. 411, 358 S.E.2d 134 (1987); Taylor v. Exeter Drilling Co., 737 P.2d 1063 (1987); Amos v. Gilbert Western Corp., 103 N.M. 631, 711 P.2d 908 (N.M. App. 1985); Dane County Hosp. and Home v. Labor and Indus. Review Comm'n, 125 Wis. 2d 308, 371 N.W.2d 815 (1985).

82. 241 Ark. at 499-500, 409 S.W.2d at 503-04 (discussing ARK. STAT. ANN. § 81-1313(a) (1960) (now codified at ARK. CODE ANN. § 11-9-519 (1987))).

83. 241 Ark. at 498-99, 409 S.W.2d at 503 (emphasis added).

84. 291 Ark. at 628, 727 S.W.2d at 828.

disability.⁸⁵

Court of appeals cases decided subsequent to *Guffey* have not allowed temporary benefits after the healing period has ended.⁸⁶ However, they have allowed the claimant to establish the existence of a *new* healing period for the same injury.⁸⁷ This approach seems to have support in other states⁸⁸ and can be readily harmonized with *Guffey*.⁸⁹

Guffey has the effect of forcing the Workers' Compensation Commission to cease all temporary benefits at or before the end of the healing period and make a final determination as to the permanency and degree of the claimant's disability. Since it is settled law in Arkansas that the Commission must settle all doubts as to coverage in favor of the claimant,⁹⁰ it is probable that this will result in an increase in the number of permanent total disability benefits that will be awarded.⁹¹

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85. The holding in *McNeely* was that a claimant who suffered a scheduled injury which proved to be permanently and totally disabling was entitled to the greater benefits provided by permanent total disability instead of being limited to the restricted benefits provided by the scheduled injury. 241 Ark. at 499, 409 S.W.2d at 503. However, the dicta from which current total disability is said to have arisen merely took note of the fact that the Commission did not affirmatively designate the total disability as "permanent total disability." See *supra* note 46.

86. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987); *Basford v. Weyerhaeuser Co.*, 21 Ark. App. 223, 730 S.W.2d 916 (1987).

87. In *Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987) the court of appeals held that the claimant's recurrence of a previous injury was causally connected to the first injury. After determining that the claimant had entered a new healing period, the court harmonized *Guffey* and allowed additional temporary total disability benefits.

88. See, e.g., *Clyatt Memorial, Inc. v. Scott*, 394 So. 2d 159 (Fla. App. 1981); *Smitty's Coffee Shop v. Florida Indus. Comm'n*, 86 So. 2d 268 (Fla. 1956).

89. The court in *Pinson* harmonized its decision with *Guffey* by noting that *Guffey* clearly contemplated only a single healing period when it held that there could be no award of temporary disability benefits after the healing period. Also, there is no indication that the claimant in *Guffey* underwent a second healing period because of a subsequent medical complication. *Pinson*, 22 Ark. App. at 195, 737 S.W.2d at 663.

90. *Guffey*, 291 Ark. 624, 727 S.W.2d 826.

91. This is because the cases in which the Commission would normally award current total disability were those in which the Commission had to choose between permanent total disability and some lesser compensation (or none at all). See *supra* note 65.

